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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 904.

CARDINAL SPORTING GOODS COMPANY, INC., and LEADER ACTIVITY COMPANY, INC.,
Appellants.

v.

THOMAS F. EAGLETON, Attorney General of the State of Missouri, DANIEL V. O'BRIEN, Prosecuting Attorney of Saint Louis County, Missouri, and RAYMOND W. HENSLEY, Superintendent of Police of Saint Louis County Missouri,
Appellees.

On Appeal from a Three-Judge District Court Sitting in the Eastern District of Missouri.

MOTION TO DISMISS.

ARTHUR R. TUCKER,
SAMUEL H. LIBERMAN,
CHARLES L. EDSON,
LEWIS, RICE, TUCKER, ALLEN and CHUBB,
1555 Railway Exchange Building,
611 Olive Street,
St. Louis 1, Missouri,
Special Counsel for Thomas F. Eagleton, Attorney General of the State of Missouri, Daniel V. O'Brien, Prosecuting Attorney of Saint Louis County, Missouri, and Raymond W. Hensley, Superintendent of Police of Saint Louis County, Missouri, Appellees.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

No. 904.

CARDINAL SPORTING GOODS COMPANY, INC., and LEADER ACTIVITY COMPANY, INC.,
Appellants,

v.

THOMAS F. EAGLETON, Attorney General of the State of Missouri, DANIEL V. O'BRIEN, Prosecuting Attorney of Saint Louis County, Missouri, and RAYMOND W. HENSLEY, Superintendent of Police of Saint Louis County Missouri,
Appellees.

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Come now Appellees, Thomas F. Eagleton, Attorney General of the State of Missouri, Daniel V. O'Brien, Prosecuting Attorney of Saint Louis County, Missouri, and

Raymond W. Hensley, Superintendent of Police of Saint Louis County, Missouri, and move that the appeal from the decision of the three-judge District Court of the Eastern District of Missouri in the above-captioned matter be dismissed for the reasons herein set forth:

1. That, on December 11, 1961, the Supreme Court of Missouri in **State v. Katz Drug Company**, 352 S. W. 2d 678 (banc), upheld the constitutionality of Sections 563.720 and 563.730, R. S. Mo. 1959 (the Sunday Selling Law).

2. That thereafter, Appellants instituted this action, seeking an injunction restraining Appellees from enforcing the aforementioned Sunday Selling Law and Sections 563.690 and 563.700 (the Sabbath Breaking Laws) against them, claiming said laws to be unconstitutional under the Constitution of the United States.

3. That on November 15, 1962, the court below denied such relief, holding the Sunday Selling Law not to be in conflict with the Constitution of the United States, and holding that Appellants had no standing to attack the Sabbath Breaking Laws as said laws had not been enforced against them.

4. That on March 11, 1963 (the date on which Appellees were served with the Jurisdictional Statement herein), the Supreme Court of Missouri in **Harvey v. Priest**, 366 S. W. 2d 324 (banc) sua sponte, declared the Sunday Selling Law to be unconstitutional, overruling the aforementioned decision in the **Katz** case. (A copy of the Opinion in **Harvey v. Priest** may be found in the Southwestern Reporter Advance Sheet of May 14, 1963.)

5. That the decision in **Harvey v. Priest**, supra, has now become final and Appellees have acquiesced in said decision and have not enforced the Sunday Selling Law

against the Appellants nor have they enforced or threatened to enforce the Sabbath Breaking Laws against Appellants.

Wherefore, as the controversy between Appellees and Appellants has become moot, Appellees move that this Court dismiss Appellants' appeal herein.

Respectfully submitted,

ARTHUR R. TUCKER,

SAMUEL H. LIBERMAN,

CHARLES L. EDSON,
LEWIS, RICE, TUCKER,
ALLEN and CHUBB,
1555 Railway Exchange Building,
611 Olive Street,
St. Louis 1, Missouri,
Special Counsel for Thomas F. Eagleton, Attorney General of the State of Missouri, Daniel V. O'Brien, Prosecuting Attorney of Saint Louis County, Missouri, and Raymond W. Hensley, Superintendent of Police of Saint Louis County, Missouri, Appellees

State of Missouri, }
City of St. Louis, } ss

Charles L. Edson, being duly sworn, upon his oath states that the facts contained in the above and foregoing motion,

are true and correct to the best of his knowledge and belief.

.....

Charles L. Edson.

Subscribed and sworn to before me this .... day of May, 1963.

.....

Notary Public.

My commission expires: .....